

September 29, 2005

**MEMORANDUM TO:** Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

**FROM:** Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Expedited Sunset Review of the Antidumping Duty Order on  
Sparklers from the People's Republic of China ("China")

Summary

We have analyzed the substantive response of the domestic interested parties in the second sunset review of the antidumping duty order covering sparklers from China. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which the Department of Commerce ("the Department") received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Order

The Department issued an antidumping duty order on imports of sparklers from China, applying a country-wide rate of 75.88 percent and specific margins for the following companies. *See Antidumping Duty Order: Sparklers from the People's Republic of China*, 56 FR 27946 (June 18, 1991).

Guangxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch ("Guangxi")	1.64
Hunan Provincial Firecrackers & Fireworks Import & Export Corporation ("Hunan")	93.54

Jiangxi Native Produce Import & Export Corporation,  
Guangzhou Fireworks Company (“Jiangxi”) 65.78

China-wide rate 75.88

The Department later amended this antidumping duty order, in accordance with *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) with the following margins. *See Sparklers from the People’s Republic of China: Adverse Decision and Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance with Decision upon Remand*, 58 FR 40624 (July 29, 1993).<sup>1</sup>

Guangxi Native Produce Import & Export Corporation,  
Behai Fireworks and Firecrackers Branch 41.75

Jiangxi Native Produce Import & Export Corporation,  
Guangzhou Fireworks Company 93.54

China-wide rate 93.54

The Department conducted several administrative reviews covering the period addressed by the first sunset review with respect to sparklers from China in which the Department found margins of 93.54 percent for Guangxi, Hunan, and Jiangxi. *See Sparklers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 60 FR 16605 (March 31, 1995), *Sparklers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 60 FR 54335 (October 23, 1995), *Sparklers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 61 FR 39630 (July 30, 1996), and *Sparklers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 43293 (July 13, 2000). However, the Department conducted no administrative reviews during the period addressed by this five-year sunset review. The order remains in effect for all manufacturers and exporters of the subject merchandise from China.

The Department has not conducted any changed circumstances reviews or duty absorption reviews but made a scope ruling that Fritz Companies, Inc.’s 14-inch Morning Glory is outside the scope of this order. *See Notice of Scope Rulings*, 60 FR 36782 (July 18, 1995). Duty absorption inquiries may not be conducted on pre-Uruguay Round Agreement Act orders. *See FAG Italia S.p.A. v. United States*, 291 F.3d 806 (Fed. Cir. 2002).

The Department published its notice of initiation of the first sunset review on July 1, 1999, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). *See Initiation of Five-Year Reviews*, 64 FR 35588 (July 1, 1999). As a result, the Department found that

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<sup>1</sup>In the remand results, the Department determined that critical circumstances existed with respect to imports of sparklers from China exported by Jiangxi and all other companies (except Guangxi and Hunan).

revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping with the following rates. *See Final Results of Expedited Sunset Review: Sparklers from the People's Republic of China*, 65 FR 5312 (February 3, 2000) ("First Sunset Review").

Guangxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch	41.75
Hunan Provincial Firecrackers & Fireworks Import & Export Corporation	93.54
Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company	93.54
China-wide rate	93.54

On July 6, 2000, the International Trade Commission ("ITC") determined, pursuant to section 751(c) of the Act, that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Sparklers from China*, 65 FR 41728 (July 6, 2000) and USITC Pub. 3317, Inv. Nos. 701-TA-464 (Review) (July 2000). On August 31, 2000, the Department published the notice of continuation of this antidumping duty order. *See Continuation of Antidumping Duty Order: Sparklers from the People's Republic of China*, 65 FR 52985 (August 31, 2000).

### Background

On June 1, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on sparklers from China pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Reviews*, 70 FR 31423 (June 1, 2005). The Department received the Notice of Intent to Participate from Diamond Sparkler Manufacturing Company ("Diamond") and Elkton Sparkler Company ("Elkton") (collectively "domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Diamond and Elkton claimed interested party status under section 771(9)(C) of the Act, as domestic producers of sparklers. The Department also received complete substantive responses from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department received no response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of this order.

## Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Interested Party Comments

Elkton argues that it can only expand its U.S. production if the antidumping duty order remains in place. *See* Sparklers from the People's Republic of China, Substantive Response to the Notice of Initiation of the Second Five-Year (Sunset) Review of Elkton ("Elkton Response") (July 1, 2005) at 3. Diamond contends that the revocation of this order will lead to increasing sparkler imports that could result in dumping, price depression and suppression, further market loss, and the likely demise of the U.S. sparkler industry. *See* Substantive Response of Diamond, "Sparklers from the People's Republic of China: A-570-804 2<sup>nd</sup> Sunset Review" (June 22, 2005) ("Diamond Response"). Diamond argues that because a dumping margin of 93.54 percent has existed for the majority of time for this order, there is a likelihood of continuation of the dumping of sparklers if the order were revoked. *See* Diamond Response at 3. The domestic interested parties state that statistical data on sparklers cover other fireworks, such that data on sparklers alone are not available. Elkton Response at 5 and Diamond Response at 3. However, the domestic interested parties state that official import data show that import volumes of certain categories of fireworks have substantially increased since the last five-year review. *Id.* Elkton states that the import data accurately reflect the increase in sparkler imports, suggesting that Chinese exporters have increased dumping to gain market share in the United States. Elkton Response at 5-6. The domestic interested parties argue that the Department may reasonably infer that dumping would continue if the discipline of the order were revoked. *See* Elkton Response at 5 and Diamond Response at 3.

#### Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), and the Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report"), the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation

or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. With respect to this order, the Department has conducted no administrative reviews during the period of this sunset review. However, the Department determined rates above *de minimis* for all Chinese manufacturers and exporters during the first sunset review. *See* First Sunset Review.

Pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. Using statistics provided by the ITC Dataweb, the Department finds that imports of fireworks (which include sparklers) from China have significantly increased since the issuance of the continuation of the order. *See* attached import statistics.<sup>2</sup> For example, imports of fireworks, which would include sparklers, from China increased from 64.9 million kilograms in 2000 to 103.6 million kilograms in 2004. *Id.* The Department notes that publicly available data does not show whether any imports that entered the United States under the HTS subheadings covered by this order consisted of subject merchandise. In this case, sparklers enter the United States under the HTS basket categories (*i.e.*, entries of non-subject merchandise are also reported under the same item number). Thus, the continued existence of dumping margins above the *de minimis* level alone is sufficient to determine that the order continues.

The Department normally will determine that revocation of an order is not likely to lead to continuation of dumping where dumping has declined accompanied by steady or increasing imports. *See* SAA at 889-90. However, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. *See* SAA at 890. In this case, the Department found dumping above *de minimis* levels in the first sunset review. The Department has also determined fireworks, including sparklers, have increasing volumes during the period of this sunset review. Absent argument and evidence to the contrary, the Department has determined that dumping would likely continue or recur if the order were revoked based on the existence of dumping margins above *de minimis* levels and no administrative reviews during the period of this sunset review.

## 2. Magnitude of the Margin Likely to Prevail

### Interested Party Comments

In its substantive response, Elkton requests that the Department report to the ITC a rate of 93.54 percent for all Chinese exporters because this margin (from the 1992-93 administrative review of Guangxi and the investigation of all other companies) more accurately reflects the margin likely

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<sup>2</sup>The Harmonized Tariff Schedule of the United States (“HTS”) subcategory 3604.10.00 (fireworks), that was used in the investigation, is no longer valid. The Department has reviewed current categories and has determined that sparklers are currently classified in subcategories 3604.10.10.00, 3604.10.90.10, and 3604.10.90.50.

to prevail for all manufacturers if the order were revoked. *See* Elkton Response at 6. Elkton notes that during the life span of this order, only one Chinese manufacturer requested an administrative review which was later terminated. *See* Elkton Response at 6. In addition, Elkton states that the Department has applied adverse facts available when it did not receive a response to its questionnaires in several administrative reviews. *Id.* Therefore, Elkton postulates that the lack of interest by Chinese manufacturers indicates that the China-wide rate of 93.54 percent reflects the level of dumping, even though the rate is likely understated. *Id.* The domestic interested parties request that the Department report to the ITC a dumping margin of 93.54 percent for Chinese manufacturers and exporters.

### Department's Position

The Department will normally provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “China-wide” rate from the investigation. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.

In this case, the domestic interested parties request that the Department report to the ITC the China-wide margin of 93.54 percent as found in the investigation for most Chinese manufacturers and as found in an administrative review for Guangxi. Diamond Response at 3 and Elkton Response at 6. The Department may, in response to an argument from an interested party, provide to the ITC a more recently calculated margin for a particular company where for that company, dumping margins increased, even if the increase was a result of the application of best information or facts available. The Department determined in the original investigation a dumping margin of 41.75 percent for Guangxi and 93.54 percent for the rest of the Chinese manufacturers and exporters. *See Sparklers from the People’s Republic of China: Adverse Decision and Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance with Decision upon Remand*, 58 FR 40624 (July 29, 1993). Further, during the 1992-93 administrative review the Department determined a margin of 93.54 percent based on adverse facts available for Guangxi. *See Sparklers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 60 FR 16605 (March 31, 1995). Although the Department determined a margin of 93.54 percent for the 1992-93 review, the Department subsequently used the rate of 41.75 percent for Guangxi during the first sunset review. *See First Sunset Review*. In this sunset review, Elkton urges the Department to reject the margins from the original investigation and to select instead 93.54 percent, the dumping margin from the administrative reviews. Elkton bases its argument on the respondents’ failure to either request or participate in administrative reviews since the issuance of the order. The Department disagrees with Elkton on selecting 93.54 percent for all producers and exporters as the margin likely to continue if the order were revoked.

In the instant case, the Department determines that it is appropriate to report to the ITC the margins from the first sunset review because Chinese exporters have continued to dump despite the discipline of the order. In addition, the Department will report to the ITC the China-wide rate of 93.54 percent from the first sunset review for all Chinese manufacturers and exporters, except Guangxi, as contained in the *Final Results of Review* section of this notice. The Department has determined that the China-wide rate is probative of the behavior of Chinese producers and exporters not specifically identified in the antidumping duty order if the order were revoked as it is the only margin that reflects their actions absent the discipline of the order.

#### Final Results of Review

We determine that revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Guangxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch	41.75
Hunan Provincial Firecrackers & Fireworks Import & Export Corporation	93.54
Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company	93.54
China-wide rate	93.54

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register*.

AGREE \_\_\_\_X\_\_\_\_

DISAGREE\_\_\_\_\_

**ORIGINAL SIGNED BY BARBARA TILLMAN**

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

**9/29/05**

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(Date)